

CHAPTER NO. 398

HOUSE BILL NO. 2314

By Representatives McMillan, Hargrove, Litz, Coleman, Cobb, Yokley, Sontany, Fitzhugh, Newton, Henri Brooks, DuBois, Fowlkes, West, McDonald, Bone, Curtiss, Davidson, Hood, Favors, Mike Turner, Bunch, Kelsey, Rowland, Phillip Johnson, Maggart, Baird, Todd, Pleasant, Lynn, Campfield, Dunn, Harry Brooks, Niceley, Curtis Johnson, Langster, Harwell, Hawk, Watson, Hill, Davis, Hargett, Swafford, Clem, Cochran, Godsey, Eldridge, Montgomery, Sargent, Roach, McKee, Sherry Jones, Moore, Pruitt, Crider, Hensley, Briley, Borchert, Pinion, Shepard, Towns, Odom, Matheny, Gresham, Hackworth, Mumpower, Harmon, Strader, Maddox, Winningham, McCormick, Marrero, Larry Turner, Shaw and Mr. Speaker Naifeh

Substituted for: Senate Bill No. 2294

By Senators Kyle, Miller, Burks, Fowler, Kilby, McLeary, Cooper, Kurita, Haynes, Harper, Jackson, Crutchfield, Chism, Bowers, Crowe, Tracy, Black

AN ACT to amend Tennessee Code Annotated, Title 67, Chapter 6, relative to sales and use tax.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 67, Chapter 6, Part 3, is amended by adding the following new section:

Section 67-6-393.

(a) The exemption provided by this section shall be known as a "Sales Tax Holiday." There is exempt from the tax imposed by this chapter the following items of tangible personal property if sold between 12:01 a.m. on the first Friday of August and 11:59 p.m. the following Sunday:

(1) Clothing with a sales price of one hundred dollars (\$100) or less per item;

(2) School supplies with a sales price of one hundred dollars (\$100) or less per item; and

(3) Computers with a sales price of one thousand five hundred dollars (\$1,500) or less per item.

(b) The exemption provided by this section does not apply to the following:

(1) Computer software;

(2) Clothing accessories or equipment;

(3) Protective equipment;

- (4) Sport or recreational equipment;
- (5) School art supply;
- (6) School instructional material;
- (7) School computer supply;
- (8) Any item for use in a trade or business; or
- (9) The lease or rental of any item.

(c) Each retailer making exempt sales under this section shall report the amount of such sales to the commissioner on the retailer's sales and use tax returns.

(d) The exemption provided in this section shall be subject to the following provisions:

(1) Layaway sales - a sale of eligible property under a layaway sale qualifies for exemption if:

(A) Final payment on a layaway order is made by, and the property is given to, the purchaser during the exemption period; or

(B) The purchaser selects the property and the retailer accepts the order for the item during the exemption period, for immediate delivery upon full payment, even if delivery is made after the exemption period;

(2) Coupons and discounts - a discount by the seller reduces the sales price of the property and the discounted sales price determines whether the sales price is within a sales tax holiday price threshold. A coupon that reduces the sales price is treated as a discount if the seller is not reimbursed for the coupon amount by a third-party. If a discount applies to the total amount paid by a purchaser rather than to the sales price of a particular item and the purchaser has purchased both eligible property and taxable property, the seller should allocate the discount based on the total sales prices of the taxable property compared to the total sales prices of all property sold in that same transaction;

(3) Splitting of items normally sold together - articles that are normally sold as a single unit must continue to be sold in that manner. Such articles cannot be priced separately and sold as individual items in order to obtain the exemption. For example, a pair of shoes cannot have each shoe sold separately so that the sales price of each shoe is within a sales tax holiday price threshold;

(4) Rain checks - a rain check allows a customer to purchase an item at a certain price at a later time because the particular item was out of stock. Eligible property that customers purchase during the exemption period with use of a rain check will qualify for the exemption regardless of when the rain check was issued. Issuance of a rain check during the exemption period will not qualify

eligible property for the exemption if the property is actually purchased after the exemption period;

(5) Exchanges - the procedure for an exchange in regards to a sales tax holiday is as follows:

(A) If a customer purchases an item of eligible property during the exemption period, but later exchanges the item for a similar eligible item, even if a different size, different color, or other feature, no additional tax is due even if the exchange is made after the exemption period;

(B) If a customer purchases an item of eligible property during the exemption period, but after the exemption period has ended, the customer returns the item and receives credit on the purchase of a different item, the appropriate sales tax is due on the sale of the newly purchased item; and

(C) If a customer purchases an item of eligible property before the exemption period, but during the exemption period the customer returns the item and receives credit on the purchase of a different item of eligible property, no sales tax is due on the sale of the new item if the new item is purchased during the exemption period;

(6) Delivery charges - delivery charges, including shipping, handling and service charges, are part of the sales price of eligible property. For the purpose of determining a sales tax holiday price threshold, if all the property in a shipment qualifies as eligible property and the sales price for each item in the shipment is within the sales tax holiday price threshold, then the seller does not have to allocate the delivery, handling, or service charge to determine if the price threshold is exceeded. The shipment will be considered a sale of eligible products. If the shipment includes eligible property and taxable property (including an eligible item with a sales price in excess of the price threshold), the seller should allocate the delivery charge by using:

(A) A percentage based on the total sales prices of the taxable property compared to the total sales prices of all property in the shipment; or

(B) A percentage based on the total weight of the taxable property compared to the total weight of all property in the shipment. The seller must tax the percentage of the delivery charge allocated to the taxable property but does not have to tax the percentage allocated to the eligible property;

(7) Order date and back orders - for the purpose of a sales tax holiday, eligible property qualifies for exemption if:

(A) The item is both delivered to and paid for by the customer during the exemption period; or

(B) The customer orders and pays for the item and the seller accepts the order during the exemption period for immediate shipment, even if delivery is made after the exemption period. The seller accepts an order when the seller has taken action to fill the order for immediate shipment. Actions to fill an order include placement of an "in date" stamp on a mail order or assignment of an "order number" to a telephone order. An order is for immediate shipment when the customer does not request delayed shipment. An order is for immediate shipment notwithstanding that the shipment may be delayed because of a backlog of orders or because stock is currently unavailable to, or on back order by, the seller;

(8) Returns - for a sixty-day period immediately after the sales tax holiday exemption period, when a customer returns an item that would qualify for the exemption, no credit for or refund of sales tax shall be given unless the customer provides a receipt or invoice that shows tax was paid, or the seller has sufficient documentation to show that tax was paid on the specific item. This sixty-day period is set solely for the purpose of designating a time period during which the customer must provide documentation that shows that sales tax was paid on returned merchandise. The 60-day period is not intended to change a seller's policy on the time period during which the seller will accept returns; and

(9) Different time zones - the time zone of the seller's location determines the authorized time period for a sales tax holiday when the purchaser is located in one time zone and a seller is located in another.

(e) For purposes of this subsection (d), "eligible property" means an item of a type, such as clothing, that qualifies for exemption under this section

SECTION 2. Tennessee Code Annotated, Section 67-6-102(a), is amended by adding the following as new, appropriately numbered subdivisions:

(_) "Clothing" means all human wearing apparel suitable for general use;

(_) "Clothing accessories or equipment" means incidental items worn on the person or in conjunction with clothing;

(_) "Layaway sale" means a transaction in which property is set aside for future delivery to a customer who makes a deposit, agrees to pay the balance of the purchase price over a period of time, and, at the end of the payment period, receives the property. An order is accepted for layaway by the seller, when the seller removes the property from normal inventory or clearly identifies the property as sold to the purchaser;

(_) "Protective equipment" means items for human wear and designed as protection of the wearer against injury or disease or as protections against damage or injury of other persons or property but not suitable for general use;

(_) "Rain check" means the seller allows a customer to purchase an item at a certain price at a later time because the particular item was out of stock;

(_) “Sport or recreational equipment” means items designed for human use and worn in conjunction with an athletic or recreational activity that are not suitable for general use;

(_) “School supply” means an item used by a student in a course of study. For purposes of this chapter, the following is an all-inclusive list of “school supplies”:

- (A) Binders;
- (B) Book bags;
- (C) Calculators;
- (D) Cellophane tape;
- (E) Blackboard chalk;
- (F) Compasses;
- (G) Composition books;
- (H) Crayons;
- (I) Erasers;
- (J) Folders (expandable, pocket, plastic and manila);
- (K) Glue, paste, and paste sticks;
- (L) Highlighters;
- (M) Index cards;
- (N) Index card boxes;
- (O) Legal pads;
- (P) Lunch boxes;
- (Q) Markers;
- (R) Notebooks;
- (S) Paper (loose leaf ruled notebook paper, copy paper, graph paper, tracing paper, manila paper, colored paper, poster board, and construction paper);
- (T) Pencil boxes and other school supply boxes;
- (U) Pencil sharpeners;

- (V) Pencils;
- (W) Pens;
- (X) Protractors;
- (Y) Rulers;
- (Z) Scissors; and

(AA) Writing tablets;

(_) “School art supply” means an item commonly used by a student in a course of study for artwork. For purposes of this chapter, the following is an all-inclusive list of “school art supplies”:

- (A) Clay and glazes;
- (B) Paints (acrylic, tempora, and oil);
- (C) Paintbrushes for artwork;
- (D) Sketch and drawing pads; and
- (E) Watercolors;

(_) “School instructional material” means written material commonly used by a student in a course of study as a reference and to learn the subject being taught. For purposes of this chapter, the following is an all-inclusive list of “school instructional material”:

- (A) Reference books;
- (B) Reference maps and globes;
- (C) Textbooks; and
- (D) Workbooks;

(_) “School computer supply” means an item commonly used by a student in a course of study in which a computer is used. For purposes of this chapter, the following is an all-inclusive list of “school computer supplies”:

- (A) Computer storage media (diskettes, compact disks);
- (B) Handheld electronic schedulers, except devices that are cellular phones;
- (C) Personal digital assistants, except devices that are cellular phones;

(D) Computer printers; and

(E) Printer supplies for computers (printer paper, printer ink).

SECTION 3. Tennessee Code Annotated, Section 67-6-710, is amended by adding the following as a new subsection:

(h) Notwithstanding any provision of law to the contrary, the commissioner, based upon reporting of exempt sales under § 67-6-393 and any other data or information the commissioner deems relevant, shall substantially reimburse counties and municipalities for the loss of local tax under this part 7 resulting from the exemption provided by § 67-6-393. The amount of such reimbursement shall be approximately equal to the aggregate amount of local tax that would have been collected under this part on the sale or use of goods otherwise taxable but for the enactment of § 67-6-393. The amount of the reimbursement required by this subsection shall be distributed to the counties based on the ratio of total local tax collections in the county under this part over the total local tax collections in all counties under this part. The amount received by the county under this subdivision shall be distributed first as provided for in § 67-6-712(a)(1). The remainder shall be distributed to each municipality in the county based on the ratio of total collections in that municipality over the total collections in the county and shall be distributed to the county based on the ratio of total collections in the unincorporated portions of the county over the total collections in the county. Notwithstanding any provision of § 67-6-103 to the contrary, the distribution required by this subsection shall be made from state sales tax collections prior to distribution under § 67-6-103; provided, however, that no portion of the revenue derived from the increase in the rate of sales and use tax from six percent (6%) to seven percent (7%) contained in Section 4, Chapter 856 or the Public Acts of 2002, shall be distributed pursuant to this subsection. All such revenue shall continue to be allocated as provided in Chapter 856 of the Public Acts of 2002.

SECTION 4. This act shall take effect on July 1, 2006, the public welfare requiring it.

PASSED: May 25, 2005


JIMMY NAIFEH, SPEAKER
HOUSE OF REPRESENTATIVES


JOHN S. WILDER
SPEAKER OF THE SENATE

APPROVED this 9th day of June 2005


PHIL BREDESEN, GOVERNOR